IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 53 of 2001

AND

CRIMINAL APPEAL NO. 326 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JITU BABULAL SONI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal Nos. 53 of 2001 & 326 of 2001

MR BS SUPEHIA for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MR APR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

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MR APR ABICHANDANI, ADDL

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/09/2002

ORAL JUDGEMENT

The appellants herein came to be tried by Additional City Sessions Court, Court No.2, Ahmedabad for offences punishable under Section 394 and 114 of IPC and Section 135 of Bombay Police Act, registered against them by Ahmedabad Railway Police and came to be convicted by judgement and order dated 19th October, 2000 for the said offences. The trial Court sentenced them to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 2,000/- and in default to undergo RI for six months each.

2. The brief facts leading to the incident can be narrated as under:-

2.1 One Jagdishbhai Dipsinh Gohil was sleeping on Railway Platform No.8 of Ahmedabad Railway Station on 16.5.98 on a bench. He had put his belongings in a cotton bag which was placed by him under his head. At about 4.30 A.M, as per the prosecution case, the three appellants assaulted him, robbed him of his belongings and in doing so, caused injury with a knife on his person. The victim raised shouts at the time of the incident, but there was no response. Ultimately after the assailants absconded, he lodged the complaint and an FIR came to be registered. He was treated at the Civil Hospital. On the basis of the FIR, investigation was made and the Investigating Agency, having found sufficient evidence, filed charge-sheet against them in the Court of Metropolitan Magistrate. Learned Metropolitan Magistrate, Court No.5 committed the case to the Court of City Sessions Court and the Sessions case came to be registered. Learned Additional Sessions Judge framed charge against the accused persons at Ex.2 The accused persons pleaded not guilty to the charge and claimed to be tried.

2.2 Considering the evidence led by the prosecution,

learned Additional City Sessions Judge came to a conclusion that the prosecution could prove the charge as punishable under Sections 394, read with Section 34 against all the three accused persons and therefore recorded conviction and awarded sentence as stated above.

2.3 Aggrieved by the said judgement and order, present appeals are preferred. Criminal Appeal No. 53 of 2001 is preferred by accused No.2 Jitu, whereas Appeal No. 326 of 2001 is preferred by accused No.1 and 3 - Ashok and Sanjay respectively.

3. Learned Advocate Mr. Supehia submitted that the Court below has erred in not appreciating the evidence in its correct perspective. Mr. Supehia submitted that the complainant's version is not reliable. At different stages he gives different number of persons to have committed the offence. In the FIR he says that there were two assailants. Before the Executive Magistrate, at the time of test identification parade, he identified three persons and at a later stage while deposing before the Court in examination-in-chief, he initially involves only one person and then involves two persons. Which of the version is right is a question that ought to have been addressed to by the learned trial Court. Mr. Supehia submitted that with this unstable version of the complainant/victim, implication of none of the appellant can be accepted to have been proved beyond reasonable doubt. He submitted that he does not press any other contention, but on these contention only the appeal may be allowed.

4. Learned Additional Public Prosecutor Mr. Abichandani has opposed to these appeals and according to him it is true that in the FIR the complainant has involved only two persons, but at the time of the test identification parade, he has clearly identified three persons. The complainant in his deposition has also stated to have identified three persons at the TI parade. There is no reason whatsoever to doubt the version of the complainant. It cannot be over-looked that the complainant must be in a disturbed state of mind at the time of giving complaint and the deposition is recorded after a lapse of time and therefore there may be some variance in his deposition. Mr. Abichandani submitted that the complainant has no dispute or animosity with the accused persons and has no reason to falsely implicate them. Mr. Abichandani submitted that the witness'es version may not come in the same chronology and according to Mr. Abichandani, it should be considered as an evidence of an honest and untutored deponent. He

therefore urged that the appeals may be dismissed.

5. This Court has examined the record and proceedings, depositions and relevant documents have been read over to this Court by learned Advocate for the appellants.

5.1 Complainant Jagdishbhai Dipsinh Gohil is examined at Ex.9 and and he says that he came to Ahmedabad from Himmatnagar by Udaipur Mail. He had about 2,000/- rupees with him when he got down at 4'O Clock in the morning at Ahmedabad Railway Station. He lied down on the bench in platform No.8 as it was night time. One person came and pulled his bag. When he woke up, he enquired why he is doing so and therefore the man started beating him. Same man inflicted a knife blow which caused injury on his right cheek and lips. The man snatched away the bag containing money, took out the money and ran away after throwing away the bag. Complainant went to Sabarmati Railway Hospital and then to the Civil Hospital and took treatment where Ahmedabad Police came and recorded his complaint. He stated that he identified three persons in the test identification parade conducted by the Executive Magistrate. All the three persons were at the Railway Station while robbing him. He identified Jitu Babulal Soni as the person who had inflicted knife blow and accused Sanjay as the person who had snatched away the bag. The complainant has been cross-examined, but sticks to his version and no material favourable to the accused has been elicited except that there was some darkness.

5.2 The test identification parade was conducted by Sureshchandra Dixit Ex.11. He states as to how he conducted the TI parade and says that the complainant had identified the three accused persons out of the row of persons. He also has been cross-examined, but there is no material brought out in the cross-examination to help the accused appellants. The panch-witness Rajendra Amrutlal Ex.14 has not supported the prosecution case. Panch Lavjibhai Bhanabhai Ex.15 says that he was a panch to Ex.16. The said panchnama was regarding arrest and recovery of muddamal. Witnesses Khaibarali Ex.17 and Vijaysinh Ex.18 have not supported the prosecution case. Investigating Officer Champavat is examined at Ex.26.

5.3 Having regard to the evidence, what emerges is that the complainant says in his complaint that there were two persons who had assailed him and one of them had snatched the bag and the other had inflicted knife blow on him. It is true that in his deposition initially he stated that only one man had come and snatched his bag,

but in examination-in-chief itself he clearly stated that accused Jitu Babulal Soni had inflicted knife blow and Sanjay had snatched the bag. Therefore in substance there is no conflict between FIR and the deposition so far as accused Jitu and Sanjay are concerned. However, it has to be accepted that so far as accused Ashok is concerned, there is no evidence against him except that he is being identified by the complainant in the TI parade and in the Court but the complainant does not attribute any overt act to him. In the opinion of this Court therefore, accused Ashok could not have been convicted for the offence. So far as conviction of Jitu Babulal Soni and Sanjay alias Bombaio Ramratan Thakore is concerned, as stated above there is sufficient evidence against them. The complainant was the sole victim and sole witness to the incident. He clearly implicates two persons in the FIR. He also implicates both of them in his deposition as persons who had snatched the bag and who had inflicted the injury to victim. Complainant having sustained injury is also established by medical evidence and there is no reason to doubt any of these pieces of evidence. As a result Appeal No. 53 of 2001 preferred by appellant Jitu Babulal Soni cannot be accepted. The same is dismissed.

Appeal No. 326 of 2001 preferred by Ashok and Sanjay can be accepted in part, qua accused Ashok only. The judgement and order recorded by the Additional Sessions Judge in Sessions Case No. 6 of 2000 is therefore confirmed so far as conviction of appellant Jitu Babulal Soni and Sanjay alias Bombaio Ramratan Thakore is concerned, with no change in the sentence.

Appeal No. 326 of 2001 so far as it relates to Ashok alias Gandio Bhupatbhai Bhil is concerned, it is accepted and the judgement and order recording conviction of Ashok alias Gandio Bhupatbhai Bhil is hereby set aside. He is acquitted of the charges against him and he be set at liberty forthwith if not required in any other case. Fine if any paid by him be refunded.

(A.L.Dave, J.)

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